

COMPLIANCE BOARD OPINION NO. 03-18

August 20, 2003

Mr. Conrad P. Potemra

The Open Meetings Compliance Board has considered your complaint that the Commissioners of Poolesville violated the Open Meetings Act in connection with their meeting on May 5, 2003. The complaint alleged a procedural irregularity, inadequacies in the processing of minutes, and lack of a proper basis to close the meeting. The Compliance Board's opinion with respect to each allegation is set forth below.

I

Procedures for Closing the Meeting

A. Complaint and Response

The complaint cited §10-508(d)(2)(ii) of the Open Meetings Act¹ for the proposition that “the Commissioners are required to have the president or his representative open the meeting. [P]er the posted minutes, this was not done.” The materials supplied with the complaint included what appears to be a transcript of the end of the open portion of the May 5 meeting. The transcript reflected a motion by a Commissioner to close the meeting under the exceptions in the Open Meetings Act for specific personnel matters and the obtaining of legal advice.

In a timely response on behalf of the Commissioners, Charles S. Rand, Esquire, Town Attorney, asserted that “the President Pro Tem was present and in fact opened the meeting.” Mr. Rand pointed out that the section cited in the complaint, §10-508(d)(2)(ii), contains no requirement related to the presiding officer's opening of the meeting. Moreover, this provision, according to Mr. Rand, “is seen to contain no requirement that this useless fact be recited in the minutes.” The “useless fact” is the identity of the official who opened the meeting.

B. Analysis

The complaint's wording about “opening the meeting” is ambiguous. Nevertheless, given the content of the statutory provision cited, the import of the complaint is clear enough: that the presiding officer failed to comply with the Act's obligation, prior to a closed meeting, to “make a written statement of the reason for closing the meeting,

¹ All statutory references in this opinion are to the State Government Article, Maryland Code.

including a citation of the authority under this section, and a listing of the topics to be discussed.” From the transcript, it is clear that the presiding officer did comply with the portion of the Act that requires the conduct of a recorded vote on the closing of the session. §10-508(d)(2)(i). The response of the Commissioners, however, did not supply a copy of the required written statement, if one was prepared.

Consequently, we have no basis on which to issue an opinion on this aspect of the complaint. If a written statement that complied with §10-508(d)(2)(ii) was not prepared by the presiding officer, then the Act was violated. If one was prepared, albeit not supplied to us, then the Act was not violated.

II

Disclosure of Information about the Closed Meeting

A. Complaint and Response

The complaint cited §10-509(c)(2) for the proposition that, after meeting in closed session, a public body is required to make certain disclosures at its next open session. Specifically, this provision of the Act requires the minutes of a public body’s next open session to disclose the time, place, and purpose of the preceding closed session; a record of the vote of each member at the closing of the session; a citation of the authority under the Act for closing the session; and a listing of the topics of discussion, persons present, and each action taken during the session. The complaint alleged that “this information was not presented to the public at the May 19, 2003 meeting This disclosure was not available to the public for over a month after the meeting when the minutes were distributed at the June 16 meeting.” The complaint alleged that “a short verbal summary of the [May 5] meeting” should have been presented to those in attendance at the next open meeting, which occurred on May 19.

In his response, Mr. Rand contended that §10-509(c)(2) does not require that “a short verbal summary of the meeting be provided.” He argued that the Town had complied with all four of the requirements in this paragraph of the Act.

B. Analysis

The complaint is incorrect in contending that a public body has a duty to present orally at an open meeting a summary of what occurred at the prior closed meeting. The provision in question simply imposes an obligation on the public body to include the specified information in the minutes of its next open meeting, not to present it at the open meeting itself. The information about the May 5 closed session made available to the public as part of the minutes for the May 19 open session substantially complied with the Act’s requirement.² Therefore, we find no violation of the Act in this respect.

² The Act requires “a citation of the authority ... for closing the session.” The minutes noted that the session was closed “to discuss with counsel a threat of litigation”

III

Timing of the Minutes

A. *Complaint and Response*

The complaint alleged that the minutes of the May 5 closed session were not provided until June 16. The complaint contended that the delay violated the requirement in §10-509(b) that minutes be prepared “as soon as practicable after a public body meets.” The complaint also asserted that the minutes reflecting the closed session are not posted on the Town’s website.

Mr. Rand’s response describes the process of minutes preparation as follows:

The Commissioners’ practice is to send our recorded open-session tapes to a transcriber “as soon as practicable after [an open Poolesville agency meeting].” Occasionally it takes more than three weeks before they are returned. Then, they have to be copied and distributed to the Commissioners for review sufficiently ahead of the next public session to allow for adoption after correction. Minutes of any executive session are combined with the transcription for inclusion for any executive session held the same evening for review, approval and public distribution. Obviously, they cannot take on legal significance and be “provided” until they are adopted by vote in open session. In this case, the approximate six-week preparation-adoption time is both reasonable and expedient.

B. *Analysis*

The public has a right under §10-509(d) to inspect the minutes of open meetings, including the information required by the Act to be disclosed about a prior closed meeting. Consequently, a public body may not excessively delay the preparation of these minutes. See Compliance Board Opinion 99-18 (November 4, 1999), *reprinted in 2 Official Opinions of the Maryland Open Meetings Compliance Board* 87. In that opinion, we pointed out that “the cycle of minutes preparation should parallel the cycle of the public body’s meetings, with only the lag time needed to draft and review minutes.” Given the need for a reasonable preparation time, we see no violation arising from the Commissioners’ disclosure on June 16 of minutes from the May 5 meeting.³

and “to discuss a personnel matter.” The better practice for “a citation of authority” would be to identify explicitly the corresponding exceptions in §10-508(a) of the Act, but these references are clear enough to indicate the authority.

³ Although the provision of a tape recording of an open meeting does not suffice to comply with the Act’s requirement that minutes be open to public inspection, the provision

With respect to the complaint's allegation that the information about the May 5 closed session, although made available to the public, was not posted on the Town's website, we point out that the Act does not contain a requirement that minutes be available on the Internet. Rather, the Act's requirement is that they "be open to public inspection during ordinary business hours." §10-509(d). This description implies that the physical availability of written minutes suffices for compliance. Because it is evident that the Commissioners did make these minutes available, they complied with the Act.

IV

Basis for the Closed Meeting

A. *Complaint and Response*

The complaint objected to the closed status of the portion of the May 5 meeting that related to the question whether the Town Attorney's contract should be renewed. The complaint describes as "almost ludicrous" the idea that a closed meeting might be needed "to decide to put the lawyer's contract up for public advertisement and bid. What could possibly be secret about this issue?"

Mr. Rand's response, in essence, is that consideration of the contract renewal involved a discussion of the Town Attorney's performance. Therefore, the discussion was lawfully closed as a personnel matter.

B. *Analysis*

We conclude that the "specific personnel" exception in the Act, §10-508(a)(1), justified the closing of this portion of the meeting. This provision allows discussion in closed session of, among other things, "the appointment ... or performance appraisal of appointees ... over whom [the public body] has jurisdiction." Although the Town's relationship with the Town Attorney is embodied in a contract, the discussion on May 5 was in the nature of a performance appraisal of an appointee and is thus squarely within the exception.

V

Conclusion

In most respects, the Compliance Board is able to conclude that the Commissioners of Poolesville did not violate the Open Meetings Act with respect to their closed session on May 5, 2003. The Compliance Board is unable to render an opinion whether the

of a written transcript based on a tape does meet the Act's requirement. See Compliance Board Opinion 96-4 (May 1, 1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 162, 165.

Commissioners complied with the Act's obligation that the presiding officer prepare a specified written statement prior to the closing of the meeting.

The Compliance Board notes with dismay that both the complaint and the response contained derogatory comments and sarcastic remarks. Perhaps the long history of open meetings controversies in Poolesville makes such unfortunate language predictable, but given a modicum of decorum and self-control, it is not inevitable. Any future complaints from Mr. Potemra and responses from the Town ought to focus on contentions about the Open Meetings Act and refrain from insults that serve only to demean those who indulge in them.

OPEN MEETINGS COMPLIANCE BOARD

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